

Appeal from a decision of the Oregon State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease OR 22527 B.

Affirmed.

Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals --  
Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1982). Under 30 U.S.C. § 188(c) (1982), the Department of the Interior has no authority to make a class I reinstatement of a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals --  
Payments: Generally -- Words and Phrases

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment within the meaning of 43 CFR 3108.2-1(c). A tender of rental payment is made only when a lessee submits payment to the BLM office administering his lease, providing BLM with the opportunity either to receive or decline payment. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for a class I reinstatement of an oil and gas lease.

APPEARANCES: William E. Phalen, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

William E. Phalen has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated April 2, 1984, denying his petition for reinstatement of oil and gas lease OR 22527 B.

Effective March 1, 1982, BLM issued noncompetitive oil and gas lease OR 22527 for 2069.03 acres of land situated in Jefferson County, Oregon, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). On December 5, 1983, BLM issued a decision approving an assignment of 80 acres of the land covered by this lease to appellant effective November 1, 1983, under new serial number OR 22527 B. The December 1983 BLM decision also advised appellant that he was responsible for payment of rental on this lease. By notice dated March 12, 1984, BLM informed appellant that lease OR 22527 B had terminated effective March 1, 1984, the anniversary date of the lease, because the annual rental due on that date was not timely received.

BLM's termination notice further stated:

You have the right to petition for reinstatement of the lease, pursuant to 30 U.S.C. 188(c), Class I reinstatements, and 30 U.S.C. 188(d) and (e), Class II reinstatements. The conditions to be met for a Class I or Class II reinstatement are outlined below.

I. Class I (30 U.S.C. 188(c); 43 CFR 3108.2-1(c))

Your lease may be reinstated under these provisions only if: (1) the rental due is paid or tendered to this office within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence, (2) that a petition for reinstatement, together with the required rental, is filed in this office within 15 days after receipt of this Notice, and (3) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease. If these conditions are met, your lease will be reinstated with the original lease terms and conditions, effective on the date of the termination. If one or more of the conditions are not met, your lease may be eligible for a Class II reinstatement. However, to qualify for a Class II reinstatement, the following conditions must be met.

II. Class II (30 U.S.C. 188(d) and (e); P.L. 97-451, Sec. 401(d))

Your lease may be reinstated under these provisions only if: (1)(a) the rental is paid within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay on the anniversary date was due to inadvertence, or, (b) if the rental is not paid within 20 days after the anniversary date, it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence or due to inadvertence, (2) that a petition for reinstatement, together with the rental and royalty due from the date of termination to the date of petition and payable at the rates set out below, is filed in this office within 60 days after receipt of this Notice,

and (3) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease.

If these conditions are met, you will have to meet certain other requirements for reinstatement as follows: \* \* \* [Emphasis in original.]

Appellant received the BLM notice on March 19, 1984. On March 20, 1984, he wrote to BLM requesting reinstatement of his lease in accordance with 43 U.S.C. § 188(c) (1982), class I. In his letter, he stated that his failure to pay the rental by the anniversary date was inadvertent, and not intentional. He advised that he could not have payment in the BLM office by the 20th day, but that it would be posted by that time. Appellant's petition for reinstatement and rental payment were received on March 23, 1984. In its April 2, 1984, decision, BLM denied appellant's petition for a class I reinstatement because the rental due was not paid within 20 days after the anniversary date of the lease, and it was not shown that the reason for failure to pay was either justifiable or not due to a lack of reasonable diligence. BLM concluded by suggesting that appellant may wish to consider reinstatement under the provisions of class II, 30 U.S.C. § 188(d), (e) (1982).

In his statement of reasons for appeal, appellant states that class II reinstatement, 30 U.S.C. § 188(d), (e) (1982), is unacceptable, and maintains that he has complied with conditions for class I reinstatement. Appellant argues that BLM's failure to notify him of the date the rental payment was due resulted in his untimely payment. He also complains that the notice of termination did not reach him in time for him to make payment within the 20-day period. Finally, he contends that because his rental payment was postmarked within 20 days of the lease anniversary date, his payment was tendered timely to qualify for consideration under class I reinstatement.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1982). Because appellant's rental payment was not received on March 1, 1984, the due date, the lease terminated automatically. Under 30 U.S.C. § 188(c) (1982), a terminated oil and gas lease may be reinstated where the rental is paid within 20 days and upon a showing by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. Harriet C. Shaftel, 79 IBLA 228 (1984); Vernon L. Berg, 72 IBLA 211 (1983); Tenneco Oil Co., 71 IBLA 339 (1983).

Where either condition for reinstatement is not met, a terminated lease cannot be reinstated. Accordingly, when appellant's rental payment was not paid within the required 20 days, his lease could not be reinstated pursuant to 30 U.S.C. § 188(c) (1982). Maynard J. Bonesteel, 82 IBLA 237 (1984); John F. Clifton, 82 IBLA 126 (1984); Harriet C. Shaftel, *supra*.

[2] We find no merit to appellant's principal argument that because his payment was mailed and postmarked on the 20th day from the anniversary date of the lease, it was "tendered" within 20 days thereof as required by 43 CFR 3108.2-1(c). This Department has long held that placing a check for rental in the mail does not constitute tender of a lease rental. Until the

proper BLM office has had the opportunity to receive or decline the rental check, no tender has occurred. See Mobil Oil Corp., 35 IBLA 265 (1978).

In Mobil Oil Corp., supra at 268, we cited Kerr v. United States, 108 F.2d 585, 586 (D.C. Cir. 1939), wherein the court said:

The word "tender" is usually held to mean that the thing offered must be actually produced and placed in such position that control over it is relinquished by the tenderer so that the teree may reach out and lay hold on it. Richey v. Stanley, Tex. Civ. App., 38 S.W.2d 1104; Linch v. Nebraska B. A. Co., 120 Neb. 819, 235 N.W. 456; Kreiss Potassium Phosphate Co. v. Knight, 98 Fla. 1004, 124 So. 751. It also must be made at the place agreed upon. Holmes v. Holmes, 12 Barb., N.W., 137. Neither of these conditions, in our opinion, is satisfied by the mailing of a money order, unless the payee has consented to make the post office his agent to receive payment. The act of mailing does not amount either to a tender or to a payment until the actual receipt of the letter by the addressee. The rule in such cases is that the postal authorities are the agents of the sender. In this case they were agents of the insured to transmit the premiums to the Bureau office in Washington. Until the money order reached the Bureau, it was not the money of the insurer but the money of the insured, and until that event the insured was not entitled to the reinstatement of his policy.

Clearly, appellant did not tender payment within 20 days after the due date.

Appellant argues that his failure to make rental payment in a timely manner was due to BLM's failure to notify him of the date payment was due. However, appellant fails to recognize that it is the lessee's responsibility to know when rentals are due and to effect required payment with or without benefit of courtesy notices from BLM. Instruction No. 4 on the lease assignment form 3106-5 states that approval of assignment of a portion of the leased lands creates separate leases but does not change the terms and conditions of the lease or the anniversary date for purposes of payment of annual rental. Reliance upon receiving a courtesy billing notice before the due date can neither prevent the lease from terminating by operation of law or serve to justify a failure to pay the lease rental in a timely manner. Richard C. Hubbard, 68 IBLA 170 (1982).

We reject appellant's argument that the notice of termination, which he received on March 14, 1984, should have reached him in time for him to make payment within 20 days of the anniversary date (i.e., March 20, 1984). Firstly, we note that BLM is under no obligation to send a notice of termination in time for a lessee to make the required rental payment within 20 days. In fact, the regulations in effect in March 1984 required that "[t]he Notice of Termination shall be sent only if the rental is actually paid." 43 CFR 3108.2-1(c)(1)(iii) (emphasis added). Secondly, while extra steps and costs would have been entailed, appellant could have taken measures subsequent to his receipt of the notice of termination that may have resulted in timely payment to BLM on March 20. Finally, statutory and regulatory authority was explained to appellant whereby the subject lease could be reinstated in the

absence of payment within 20 days after the anniversary date of the lease, under certain circumstances, but appellant has waived exercise of class II reinstatement procedures.

Appellant offers other arguments to demonstrate that his late payment was either justified or not due to lack of reasonable diligence. We need not address the "reasonable diligence" issue, however, since 30 U.S.C. § 188(c) (1982) requires payment of rental within 20 days of the anniversary date of the lease, and appellant failed to meet that 20-day requirement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

R. W. Mullen  
Administrative Judge

